

AMENDED IN SENATE JUNE 26, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 335**

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**Introduced by Assembly Member Fuentes**

February 18, 2009

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An act to add Section 924 to the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 335, as amended, Fuentes. Employment contracts.

Existing law prohibits certain employment contract provisions as against public policy and declares provisions in certain construction contracts between a contractor and subcontractor for work in this state that purport to require dispute resolution between the parties to be commenced or determined outside of the state to be void and unenforceable.

~~This bill would make void and unenforceable as against public policy any provision in an employment contract that requires an employee, as a condition of obtaining or continuing employment, to use a forum other than California, or to agree to a choice of law other than California law, to resolve any dispute with an employer regarding employment-related issues that arise in California.~~ *establish a rebuttable presumption that a choice of law or choice of forum provision in an employment agreement, handbook, or other statement of an employer's policies is unconscionable, violates the public policy of the state, and is void, if the provision would require an employee or job applicant to arbitrate or litigate a claim outside of California that arose from employment or conduct in this state or would deprive the employee or applicant of the protection of California law for such a claim. The bill would require a court to consider specified factors in determining whether a person*

*seeking to enforce the choice of law or choice of forum provision has rebutted the presumption.*

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares the following:

2 (a) It is the public policy of the State of California to ensure  
3 that California employees have the full benefit of the provisions  
4 of the California Labor Code and other provisions of California  
5 law that relate to employment and that employees should not be  
6 deprived of the protection of California law by contract provisions  
7 that require employees or job applicants, as a condition of  
8 employment, to submit to the laws of other states for claims that  
9 arise from employment, or the securing of employment, in  
10 California.

11 (b) All employees should have the right to access the California  
12 courts to seek redress for employment claims and employees should  
13 not be required to resolve these claims in foreign jurisdictions.

14 ~~(c) Any choice of law, choice of forum, or choice of venue~~

15 (c) *Any choice of law or choice of forum* provision in a job  
16 application, employment agreement, employment handbook, or  
17 other statement of an employer's policies applicable to its  
18 employees, is against the public policy of this state if the ~~provision~~  
19 ~~would have either of the following effects:~~ *provision would do*  
20 *either of the following:*

21 (1) ~~Requiring~~ *Require* the employee or job applicant to resolve  
22 claims outside of California that arose from employment, or the  
23 securing of employment, in California.

24 (2) ~~Depriving~~ *Deprive* the employee or job applicant of the  
25 protection of California law for claims arising from employment,  
26 or the securing of employment, in California.

27 SEC. 2. Section 924 is added to the Labor Code, to read:

28 924. ~~(a) An employer shall not require an employee or job~~  
29 ~~applicant, as a condition of employment, to waive the application~~  
30 ~~of California law to any dispute relating to employment, or the~~  
31 ~~securing of employment, in California.~~

32 ~~(b) An employer shall not require an employee or job applicant,~~  
33 ~~as a condition of employment, to resolve outside of California any~~

1 dispute regarding employment, or the securing of employment, in  
2 California:

3 ~~(e) Any choice of law, choice of forum, or choice of venue~~  
4 ~~provision in a job application, employment agreement, employment~~  
5 ~~handbook, or other statement of an employer's policies applicable~~  
6 ~~to its employees, is unconscionable, violative of the public policy~~  
7 ~~of this state, and void if the provision would have the effect of~~  
8 ~~either of the following:~~

9 ~~(1) Requiring the employee or job applicant, as a condition of~~  
10 ~~employment, to resolve claims outside of California that arose~~  
11 ~~from employment, or the securing of employment, in California:~~

12 ~~(2) Depriving the employee or job applicant of the protection~~  
13 ~~of California law for claims arising from employment, or the~~  
14 ~~securing of employment, in California:~~

15 ~~(d) Nothing in this section affects the right of an employee to~~  
16 ~~voluntarily agree to a choice of law or forum selection provision~~  
17 ~~that is not required as a condition of employment and that is the~~  
18 ~~subject of independent consideration:~~

19 924. (a) Any choice of law or choice of forum provision in an  
20 employment agreement, employment handbook, or other statement  
21 of an employer's policies applicable to its employees is presumed  
22 to be unconscionable, in violation of the public policy of this state,  
23 and void if the provision would do either of the following:

24 (1) Require the employee or job applicant to arbitrate or litigate  
25 a claim outside of California that arose from employment or  
26 conduct occurring in California.

27 (2) Deprive the employee or job applicant of the protection of  
28 California law for claims arising from employment or conduct  
29 occurring in California.

30 (b) A court shall consider all of the following factors to  
31 determine whether a person seeking to enforce a choice of law or  
32 choice of forum provision has rebutted the rebuttable presumption  
33 described in subdivision (a):

34 (1) Whether the employee was represented by counsel in  
35 negotiations regarding the employment agreement at the time that  
36 the choice of law or choice of forum provision was incorporated  
37 into the employment agreement.

38 (2) Whether separate consideration was provided by the  
39 employer in exchange for the choice of law or choice of forum  
40 provision.

1     (3) *Whether the choice of law or choice of forum provision*  
2     *provides the employee with rights and remedies that are equal to,*  
3     *or greater than, those provided by California law with respect to*  
4     *the claim.*

5     (4) *Whether the choice of law or choice of forum provision*  
6     *imposes a financial burden or other burden that would deter the*  
7     *employee from pursuing a claim against his or her employer.*

8     (c) *This section does not replace any other remedy available*  
9     *under law.*